

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LINCOLN JONES, JR., MUYESSER NILE)	Case No.: 13-CV-02390-LHK
JONES, individually and as trustees of the)	
Lincoln and M. Nile Jones Revocable Trust, and)	ORDER DENYING MOTION TO STAY
PROJECT SENTINEL, INC.,)	
)	
Plaintiffs,)	
v.)	
)	
TRAVELERS CASUALTY INSURANCE)	
COMPANY OF AMERICA,)	
)	
Defendant.)	

On July 24, 2013, Defendant Travelers Casualty Insurance Company of America (“Travelers”) moved to stay the case brought by Plaintiffs Lincoln Jones, Jr. (“L. Jones”), Muyesser Nile Jones (“M.N. Jones”) (collectively, “the Joneses”), and Project Sentinel, Inc. (“Project Sentinel”) (collectively, “Plaintiffs”). ECF No. 11. On August 6, 2013, Plaintiffs filed a timely first amended complaint (“FAC”), and on August 7, 2013, Plaintiffs filed their opposition to Travelers’ motion to stay. ECF Nos. 13, 14. Travelers filed its reply on August 14, 2013. Pursuant to Civil L.R. 7-1(b), the Court found oral argument unnecessary to resolve this motion. Having carefully considered the parties’ papers, the Court DENIES Travelers’ motion to stay.

I. BACKGROUND

On May 28, 2013, Plaintiffs initiated this suit against Travelers and alleged violations of the Fair Housing Act, 42 U.S.C. §§ 3601 et seq. (“FHA”) and violations of California’s Fair

Employment and Housing Act, California Government Code §§ 12900 et seq. (“FEHA”). ECF No. 1. Plaintiffs base their claims on Travelers’ failure to renew a property insurance policy after discovering that the Joneses rent apartments to tenants who participate in the Housing Choice Voucher Program (commonly known as the “Section 8 program”). FAC ¶ 16. According to Plaintiffs, the Section 8 program aids low-income families, the elderly, and the disabled to afford suitable housing by providing subsidies to landlords who participate in the program. FAC ¶ 8. The Joneses, who own two multi-unit buildings located on Cody Way in San Jose, California (the “Cody Way Properties”), have participated as landlords in the Section 8 program for more than a decade. FAC ¶ 12.

The Joneses obtained an insurance policy from Travelers for coverage from February 1, 2012 to February 1, 2013. FAC ¶ 14; Answer ¶ 14. Travelers first became aware that the Cody Way Properties housed tenants in the Section 8 program in August 2012 when M.N. Jones reported a slip-and-fall incident to Travelers. FAC ¶ 15; Answer ¶ 15. On November 16, 2012, Travelers notified the Jones that it would not be renewing their policy effective February 1, 2013. FAC ¶ 16; Answer ¶ 16. Because property insurance is required under their mortgage agreement, the Jones acquired new insurance in February 2013. FAC ¶ 18. The Joneses allege the premiums were more expensive than the rate paid to Travelers. *Id.*

The Joneses approached Project Sentinel, which earlier had provided pamphlets about Travelers’ policy not to insure properties with Section 8 tenants. FAC ¶ 19. Project Sentinel joined in the Joneses’ suit against Travelers. In the initial complaint, Plaintiffs asserted that Travelers’ refusal to insure properties with Section 8 tenants is “a pattern or practice of discrimination in violation of the federal and state fair housing laws.” Compl. at ¶ 20. Plaintiffs alleged that “Travelers’ practices actually or predictably result in a disparate impact on persons in classes protected by the fair housing laws, or create, increase, reinforce or perpetuate segregated housing patterns because of race, sex, disability, familial status and age.” Compl. at ¶ 22.

On July 24, 2013, Travelers moved to stay the case pending the Supreme Court’s decision in *Township of Mount Holly, N.J. v. Mt. Holly Gardens Citizens in Action, Inc.*, 133 S. Ct. 2824 (2013). The Supreme Court granted certiorari on the question of whether disparate impact claims

are cognizable under the FHA. *Mount Holly*, 133 S. Ct. at 2824; Pet. Writ Cert., No. 11-1507, 2012 WL 2151511, at *i (June 11, 2012). Travelers asserted that Plaintiffs' claims likewise arise from a disparate impact claim under the FHA and so the case should be stayed. In response, Plaintiffs filed an amended complaint in which Plaintiffs add diversity as a ground for this Court's jurisdiction and add factual allegations that Travelers engages in discriminatory treatment "based on perceptions of Section 8 voucher holders as minority, female-headed households and the associated negative stereotypes that such households are likely to cause damage to property and engage in criminal activity." FAC ¶¶ 2, 27. Relying on the FAC, Plaintiffs then filed an opposition to the motion on August 7, 2013. ECF No. 14. As noted, Travelers filed its reply on August 14, 2013.

II. LEGAL STANDARDS

Under *Landis v. North American Co.*, 299 U.S. 248 (1936), the Court has "discretionary power to stay proceedings in its own court." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th Cir. 2005). "A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). "This rule applies whether the separate proceedings are judicial, administrative, or arbitral in character, and does not require that the issues in such proceedings are necessarily controlling of the action before the court." *Id.*

"Where it is proposed that a pending proceeding be stayed, the competing interests which will be affected by the granting or refusal to grant a stay must be weighed." *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *see also Lockyer*, 398 F.3d at 1110 (applying *CMAX* standard). "Among these competing interests are the possible damage which may result from the granting of a stay, the hardship or inequity which a party may suffer in being required to go forward, and the orderly course of justice measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected to result from a stay." *CMAX*, 300 F.2d at 268. The moving party "must make out a clear case of hardship or inequity in being required to go forward,

1 if there is even a fair possibility that the stay for which he prays will work damage to someone
2 else.” *Id.* (quoting *Landis*, 299 U.S. at 255).

3 **III. DISCUSSION**

4 **A. Effect on the Case**

5 Travelers argues that the Supreme Court’s decision in *Mount Holly* directly impacts this
6 case, so a stay is warranted. The Court disagrees. *Mount Holly* speaks only to Plaintiffs’ disparate
7 impact claim under the FHA. In the FAC, however, Plaintiffs also allege direct discrimination
8 under the FEHA and FHA and disparate treatment under the FEHA. FAC ¶¶ 26-29, 38-39.
9 Plaintiffs further assert that this Court has diversity jurisdiction over the FEHA claims. FAC ¶ 2.
10 Even if the Supreme Court ultimately determines that disparate impact is not a cognizable claim
11 under the FHA, Plaintiffs still have three other theories to pursue in this Court. The Court thus
12 finds that a stay pending the outcome of *Mount Holly* does not aid in streamlining the case or
13 helping the Court manage its docket. This factor weighs against granting Travelers’ request.

14 **B. Harm to the Plaintiffs**

15 Plaintiffs assert that damage will result if the case is stayed. Opp. at 6. Plaintiffs highlight
16 their request for injunctive relief against Travelers to prevent it from executing its policy not to
17 insure properties with Section 8 participants as tenants. Opp. at 6. Travelers responds that
18 Plaintiffs’ prayer for injunctive relief is unavailing because Plaintiffs fail to complain of future
19 harm if a stay is granted. Reply at 4. Travelers further asserts that because this case is not a class
20 action, Plaintiffs’ allegations about injuries to “other landlords” are not future harm that warrants
21 denying a stay in this case. *Id.*

22 The Court finds that Plaintiffs have established a fair possibility that irreparable harm is
23 likely to result if a stay is imposed. Plaintiffs’ allegations, if true, suggest that Travelers employs a
24 policy that directly discriminates against or indirectly impacts groups protected under the FHA and
25 the FEHA. Delaying Plaintiffs’ ability to establish liability on those claims and to prevent
26 Travelers from continuing that policy would injure not only the Joneses but also Project Sentinel
27 and the persons for whom it advocates. See *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379
28 (1981) (holding nonprofit organization had standing under FHA where it alleged discriminatory

practices caused frustration of its purposes and expense of its resources); *Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002) (same).

Accordingly, this factor also counsels against granting a stay.

C. Harm to Travelers

Because Plaintiffs have established a “fair possibility” of irreparable harm, Travelers must show “clear case of hardship or inequity” if forced to proceed with the case. *Landis*, 299 U.S. at 255. Travelers contends that it would suffer hardship by having to litigate the case while the Supreme Court considers *Mount Holly*. Mot. at 7-8. The Court disagrees. It is true that the Ninth Circuit’s current case law provides for a disparate impact claim under the FHA, *see Ojo v. Farmers Group Inc.*, 600 F.3d 1205 (9th Cir. 2010), and the Supreme Court’s decision in *Mount Holly* may overrule that case law. However, even if the Supreme Court ultimately determines that disparate impact is not cognizable as a claim under the FHA, Plaintiffs’ disparate impact claim remains viable under the FEHA. *See Sisemore v. Master Fin.*, 151 Cal. App. 4th 1386, 1423 (2007). The discovery between the two claims likely overlaps and even may be identical. Furthermore, the cost of having to move forward in litigation absent the requested stay is insufficient to justify a stay. *Landis*, 398 F.3d at 1112. Travelers has not established that inequity will result if no stay is entered, and so this third factor also weighs against a stay.

IV. CONCLUSION

Because the Court finds that the three *Landis* factors all weigh against granting a stay in this case, the Court DENIES Travelers’ request. The parties currently are scheduled to appear for a case management conference on September 18, 2013 at 2:00 p.m. They shall file a joint case management statement no later than September 11, 2013.

IT IS SO ORDERED.

Dated: August 22, 2013


 LUCY H. KOH
 United States District Judge